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8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
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11 AMERIS BANK, a Georgia corporation  
12 doing business as BALBOA  
CAPITAL CORPORATION,

13 Plaintiff,

14 v.

15 GLOWDOC, LLC, a Louisiana Limited  
Liability Company;  
16 BHAVINIBEN PATEL aka BVAHINI  
PATEL aka BHAVINIBEN  
17 SURSHBHAI PATEL aka  
BHAVINIBEN SURSHBHAI  
18 PATEL, M.D., an individual,

19 Defendants.  
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Case No. 8:24-cv-00522-JWH-KES

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR DEFAULT  
JUDGMENT [ECF No. 23]**

1 Before the Court is the unopposed motion of Plaintiff Ameris Bank, doing  
2 business as Balboa Capital Corporation (“Balboa”), for default judgment against  
3 Defendants Glowdoc, LLC and Bhaviniben Patel aka Bvahini Patel aka  
4 Sureshbhai Patel aka Sureshbhai Patel, MD, an individual.<sup>1</sup> The Court  
5 concludes that this matter is appropriate for resolution without a hearing. *See*  
6 Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support, and  
7 in the absence of any opposition,<sup>2</sup> the Court **GRANTS** Balboa’s Motion.

### 8 I. BACKGROUND

9 Balboa commenced this action in March 2024. In its Complaint, Balboa  
10 asserts one claim against Glowdoc for breach of equipment financing agreement  
11 and one claim against Patel — “a managing member and/or owner and  
12 authorized agent” of Glowdoc — for breach of personal guaranty.<sup>3</sup>

13 Specifically, Balboa alleges that Defendants entered into a contract with  
14 Balboa to finance certain collateral — an Equipment Financing Agreement  
15 No. 266478-004 (the “Financing Agreement”) with a principal sum of  
16 \$143,260.00 and Patel’s separate, written personal guaranty (the “Personal  
17 Guaranty”) of that Financing Agreement.<sup>4</sup> Balboa alleges that Glowdoc  
18 breached the Financing Agreement in October 2023 by failing to make the  
19 monthly payment due..<sup>5</sup> Glowdoc’s failure to make its monthly payments put it  
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22 <sup>1</sup> Pl.’s Mot. for Default J. Against Defs. (the “Motion”) [ECF No. 23].

23 <sup>2</sup> The Court considered the documents of record in this action, including  
24 the following papers: (1) Compl. (the “Complaint”) (including its attachments)  
[ECF No. 1]; and (2) Motion (including its attachments).

25 <sup>3</sup> *See generally* Complaint; *see also id.* at ¶ 3.

26 <sup>4</sup> *Id.* at ¶ 12; *see also id.*, Ex. 2 (the “Financing Agreement and Personal  
27 Guaranty”).

28 <sup>5</sup> *Id.* at ¶ 13.

1 into default on the Financing Agreement under the contract’s terms.<sup>6</sup> Pursuant  
2 to the Financing Agreement, in light of Glowdoc’s breach, Balboa declared the  
3 entire balance under the contract—\$132,600.78—due immediately.<sup>7</sup> Following  
4 the default by Glowdoc, Balboa demanded that Patel make the payments that  
5 were required under the Financing Agreement; Patel failed to meet the guaranty  
6 obligations.<sup>8</sup> Pursuant to the terms of the Financing Agreement, Balboa is also  
7 entitled to late fees and pre-judgment interest at a rate of 10% *per annum* from  
8 the date of breach (October 27, 2023).<sup>9</sup> Defendants must also cover costs and  
9 reasonable attorneys’ fees.<sup>10</sup>

10 Through the instant Motion, Balboa seeks a judgment for the total  
11 contractual amount due—\$135,922.23—plus contractual interest, costs, and  
12 reasonable attorneys’ fees from Glowdoc and Patel, jointly and severally.<sup>11</sup>

## 13 II. LEGAL STANDARD

14 “When a party against whom a judgment for affirmative relief is sought  
15 has failed to plead or otherwise defend, and that failure is shown by affidavit or  
16 otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). “If  
17 the plaintiff’s claim is for a sum certain or a sum that can be made certain by  
18 computation, the clerk—on the plaintiff’s request, with an affidavit showing the  
19 amount due—must enter judgment for that amount and costs against a  
20 defendant who has been defaulted for not appearing and who is neither a minor  
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23 <sup>6</sup> *Id.*

24 <sup>7</sup> *Id.* at ¶ 14.

25 <sup>8</sup> *Id.* at ¶ 21.

26 <sup>9</sup> *Id.* at ¶¶ 13 & 16.

27 <sup>10</sup> *Id.* at ¶ 17.

28 <sup>11</sup> *See generally* Motion.

1 nor an incompetent person.” Fed. R. Civ. P. 55(b)(1). “In all other cases, the  
2 party must apply to the court for a default judgment.” Fed. R. Civ. P. 55(b)(2).

3 This Court’s Local Rules require an applicant for default judgment also to  
4 file a declaration that conforms to the requirements of Rule 55(b) of the Federal  
5 Rules of Civil Procedure and that includes the following information:

- 6 (a) When and against which party the default was entered;  
7 (b) The identification of the pleading to which default was entered;  
8 (c) Whether the defaulting party is an infant or incompetent person,  
9 and if so, whether that person is represented by a general guardian,  
10 committee, conservator or other representative;  
11 (d) That the Servicemembers Civil Relief Act (50 U.S.C. App.  
12 § 521) does not apply; and  
13 (e) That notice of the application has been served on the defaulting  
14 party, if required by F[ed.] R. Civ. P. 55(b)(2).

15 L.R. 55-1.

16 If the applicant meets the procedural requirements, then “[g]ranting or  
17 denying a motion for default judgment is a matter within the court’s discretion.”  
18 *Landstar Ranger, Inc. v. Parth Enterprises, Inc.*, 725 F. Supp. 2d 916, 919 (C.D.  
19 Cal. 2010) (internal quotation omitted). In exercising its discretion, a court may  
20 consider the following factors:

- 21 (1) the possibility of prejudice to the plaintiff, (2) the merits of  
22 plaintiff’s substantive claim, (3) the sufficiency of the complaint,  
23 (4) the sum of money at stake in the action; (5) the possibility of a  
24 dispute concerning material facts; (6) whether the default was due to  
25 excusable neglect, and (7) the strong policy underlying the Federal  
26 Rules of Civil Procedure favoring decisions on the merits.

27 *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986) (the “*Eitel factors*”).  
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1 “Once a party’s default has been entered, the factual allegations of the  
2 complaint, except those concerning damages, are deemed to have been admitted  
3 by the non-responding party.” *Landstar*, 725 F. Supp. 2d at 920. “The court,  
4 however, must still consider whether the unchallenged facts constitute a  
5 legitimate cause of action, since a party in default does not admit mere  
6 conclusions of law.” *Id.* (internal quotation omitted). “If the court determines  
7 that the allegations in the complaint are sufficient to establish liability, it must  
8 then determine the amount and character of the relief that should be awarded.”  
9 *Id.* (internal quotation omitted).

10 “Plaintiffs are required to prove all damages sought in the complaint, and  
11 such damages ‘shall not be different in kind from, or exceed in amount, what is  
12 demanded in the pleadings.’” *Espresso Republic, LLC v. Coffee*, 2016 WL  
13 7176564, at \*2 (C.D. Cal. Dec. 7, 2016) (quoting Fed. R. Civ. P. 54(c)).  
14 “‘Plaintiff’s burden in “proving up” damages is relatively lenient,’” but  
15 “sufficient facts, necessary to determine damages, must be provided to the  
16 court.” *Id.* (quoting *Philip Morris USA, Inc. v. Castworld Products, Inc.*, 219  
17 F.R.D. 494, 498 (C.D. Cal. 2003)). “If the amount claimed in a judgment by  
18 default is unliquidated, the applicant may submit evidence of the amount of  
19 damages by declarations.” L.R. 55-2. “Notice must be given to the defaulting  
20 party of the amount requested.” *Id.*

### 21 III. ANALYSIS

#### 22 A. Procedural Requirements

23 Balboa satisfied the procedural requirements for entry of default judgment  
24 by the Court. Pursuant to Rule 55, Balboa did not petition for entry of default  
25 judgment until after default was entered against Defendants by the Clerk.

#### 26 B. Application of the *Eitel* Factors

27 In this case, the *Eitel* factors collectively weigh in favor of awarding  
28 default judgment.

1           **1. Possibility of Prejudice to Plaintiff**

2           The first *Eitel* factor considers whether the plaintiff will be prejudiced if  
3           default is not entered. If the Motion is not granted, then, in view of Defendants’  
4           failure to communicate with Balboa or engage in this action at all, Balboa “will  
5           likely be without other recourse for recovery.” *PepsiCo, Inc. v. California Sec.*  
6           *Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002). This factor therefore weighs  
7           in favor of granting the Motion.

8           **2. Merits of Plaintiff’s Claim and Sufficiency of Complaint**

9           The second and third *Eitel* factors assess the merits of the plaintiff’s  
10          substantive claim and the sufficiency of the complaint. Those factors require the  
11          plaintiff to state a claim upon which it may recover. *See, e.g., Danning v. Lavine*,  
12          572 F.2d 1386, 1388 (9th Cir. 1978).

13          Under California law, “[t]he elements of a cause of action for breach of  
14          contract include the existence of a contract, the plaintiff’s performance or  
15          excuse for nonperformance, the defendant’s breach, and resulting damages to  
16          the plaintiff.” *J.B.B. Inv. Partners Ltd. v. Fair*, 37 Cal. App. 5th 1, 9, *as modified*  
17          (July 1, 2019). “The first element—the existence of a contract . . . requires  
18          parties capable of contracting, their consent, a lawful object, and a sufficient  
19          cause or consideration.” *Id.* “When a contract is reduced to writing,” as it is in  
20          this case, “the intention of the parties is to be ascertained from the writing  
21          alone, if possible.” Cal. Civ. Code § 1639. “The language of a contract is to  
22          govern its interpretation, if the language is clear and explicit, and does not  
23          involve an absurdity.” Cal. Civ. Code § 1638. “Interpretation of a contract is  
24          solely a question of law unless the interpretation turns upon the credibility of  
25          extrinsic evidence.” *Badie v. Bank of Am.*, 67 Cal. App. 4th 779, 799 (1998).

26          Here, Balboa has averred sufficiently detailed facts, now taken as true, to  
27          show that Glowdoc breached the Financing Agreement and that Patel breached  
28          the Personal Guaranty. Under the Financing Agreement, Balboa loaned

1 Glowdoc the sum of \$143,260.00.<sup>12</sup> Concurrent with the execution of the  
2 Financing Agreement, Patel personally guaranteed, in writing, the payment of  
3 the then-existing and future indebtedness due and owing to Balboa under the  
4 Financing Agreement.<sup>13</sup> In October 2023, Glowdoc breached the Financing  
5 Agreement, and Patel breached the Personal Guaranty by failing to make  
6 payments. Because Defendants have failed to appear, they have not asserted any  
7 defenses. As such, the second and third *Eitel* factors favor Balboa.

### 8 3. Sum of Money at Stake

9 With respect to the fourth *Eitel* factor, “[d]efault judgment is disfavored  
10 where the sum of money at stake is too large or unreasonable in relation to  
11 defendant’s conduct.” *Vogel v. Rite Aid Corp.*, 992 F. Supp. 2d 998, 1012 (C.D.  
12 Cal. 2014). Here, Balboa requests a total of \$159,094.99,<sup>14</sup> which includes the  
13 following:

- 14 • the principal amount due pursuant to the defaulted Financing Agreement
- 15 of \$135,922.23;
- 16 • \$16,013.20 in prejudgment interest at a rate of 10% *per annum* (430 days—
- 17 *i.e.*, October 27, 2023, to December 30, 2024—at \$37.24 per day);
- 18 • \$674.28 in litigation costs incurred; and
- 19 • \$6,485.28 in attorneys’ fees.<sup>15</sup>

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22 <sup>12</sup> *Id.* at 3:5; Financing Agreement and Personal Guaranty.

23 <sup>13</sup> Motion 3:23-26; Financing Agreement and Personal Guaranty.

24 <sup>14</sup> Decl. of Don Ngo in Supp. of Motion (the “Ngo Declaration”) [ECF  
25 No. 23-3] ¶ 20.

26 <sup>15</sup> Motion 4:11-14. Although Balboa asserts that it should be reimbursed for  
27 the attorney hours expended during this case, the Court instead awards  
28 attorney’s fees as set forth in L.R. 55-3, in the amount of \$6,485.28. *See, e.g.,*  
*Ameris Bank v. Silverback Processing LLC*, 2024 WL 891801, at \*4 (C.D. Cal.  
Feb. 12, 2024) (“Plaintiffs’ fee award is fixed by the Local Rules[.]”); *Ameris*



1 Those amounts are plainly contemplated in the Financing Agreement  
2 itself or the Local Rules; as such, they are reasonable for purposes of the *Eitel*  
3 inquiry. Thus, the fourth *Eitel* factor weighs in favor of default judgment.

4 **4. Possibility of Dispute Concerning Material Facts**

5 The fifth *Eitel* factor “considers the possibility that material facts are  
6 disputed.” *Vogel*, 992 F. Supp. 2d at 1012. Upon entry of default, all well-  
7 pleaded factual allegations are deemed true—except those pertaining to  
8 damages. *TeleVideo Systems Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987);  
9 *Elektra Entm’t Group Inc. v. Crawford*, 226 F.R.D. 388, 393 (C.D. Cal. 2005)  
10 (“Because all allegations in a well-pleaded complaint are taken as true after the  
11 court clerk enters default judgment, there is no likelihood that any genuine issue  
12 of material fact exists.”). Because Defendants failed to appear in this action, it is  
13 unlikely that disputes as to material facts will arise. *See id.* Accordingly, this  
14 factor favors default judgment.

15 **5. Whether Default Was Due to Excusable Neglect**

16 The sixth factor addresses whether default was due to excusable neglect.  
17 Here, Defendants were properly served in April 2024,<sup>16</sup> such that this factor  
18 favors default judgment. *See, e.g., Globe Ent. & Media, Corp. v. Glob. Images*  
19 *USA*, 2022 WL 2703845 (C.D. Cal. July 11, 2022); *Tesoro Ref. & Mktg. Co. LLC*  
20 *v. Petroleum One, Inc.*, 2014 WL 814018 (C.D. Cal. Mar. 3, 2014).

21 **6. Strong Policy Favoring Decision on the Merits**

22 Finally, although “[c]ases should be decided upon their merits whenever  
23 reasonably possible,” *Eitel*, 782 F.2d at 1472, default judgment may be entered  
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26 *Bank v. Jerry Harvey Audio LLC*, 2024 WL 3298755, at \*4 (C.D. Cal. May 21,  
27 2024) (same).

28 <sup>16</sup> Proofs of Service [ECF Nos. 17 & 18].



1 when a defendant fails to appear. *See, e.g., PepsiCo*, 238 F. Supp. 2d at 1177.  
2 This factor does not preclude the entry of default judgment.

3 In sum, six of the seven the *Eitel* factors weigh in favor of default  
4 judgment and the last is neutral. Because the majority of the factors weigh in  
5 favor of default judgment, Balboa's Motion is **GRANTED**.

6 **IV. DISPOSITION**

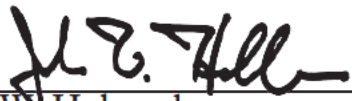
7 For the foregoing reasons, the Court hereby **ORDERS** as follows:

8 1. Balboa's instant Motion for default judgment [ECF No. 23] is  
9 **GRANTED**.

10 2. Judgment will issue accordingly.

11 **IT IS SO ORDERED.**

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13 Dated: December 30, 2024

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16 John W. Holcomb  
17 UNITED STATES DISTRICT JUDGE  
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